

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

PENSION FUND OF CEMENT MASONS'	)	
UNION LOCAL UNION NO. 502; CEMENT	)	
MASONS' INSTITUTE LOCAL 502 WELFARE	)	CASE NO.: 19-cv-1349
TRUST FUND; CEMENT MASONS' LOCAL 502	)	
AND PLASTERERS AREA 5 ANNUITY FUND;	)	JUDGE:
CEMENT MASONS' LOCAL NO. 502 RETIREE	)	
WELFARE FUND; CEMENT MASONS' UNION	)	MAG. JUDGE:
LOCAL 502 APPRENTICE EDUCATIONAL AND	)	
TRAINING TRUST; and CEMENT MASONS'	)	
UNION LOCAL NO. 502 PLASTERERS AREA 5,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
ASC INSULATION, FIREPROOFING AND	)	
SUPPLIES, INC., an Illinois Corporation,	)	
	)	
Defendant.	)	
	)	

**COMPLAINT**

NOW COME the Plaintiffs, the PENSION FUND OF CEMENT MASONS' UNION LOCAL UNION NO. 502, the CEMENT MASONS' INSTITUTE LOCAL 502 WELFARE TRUST FUND, the CEMENT MASONS' LOCAL 502 AND PLASTERERS AREA 5 ANNUITY FUND, the CEMENT MASONS' UNION LOCAL 502 APPRENTICE EDUCATIONAL AND TRAINING TRUST, the CEMENT MASONS' LOCAL NO. 502 RETIREE WELFARE FUND, and the CEMENT MASONS' UNION LOCAL NO. 502 PLASTERERS AREA 5, complaining of Defendant ASC INSULATION, FIREPROOFING AND SUPPLIES, INC., and in support, allege as follows:

**JURISDICTION AND VENUE**

1. This action arises under Sections 502 and 515 of the Employee Retirement Income Security Act (hereinafter referred to as "ERISA") (29 U.S.C. §§ 1132 and 1145) and Section 301 of

the Labor-Management Relations Act. (29 U.S.C. § 185). The Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. § 1132 and 28 U.S.C. § 1331.

2. Venue is proper in this Court pursuant to 29 U.S.C. §§ 1132(e)(2) and 1451(d) in that the PENSION FUND OF CEMENT MASONS' UNION LOCAL UNION NO. 502, the CEMENT MASONS' INSTITUTE LOCAL 502 WELFARE TRUST FUND, the CEMENT MASONS' LOCAL 502 AND PLASTERERS AREA 5 ANNUITY FUND, the CEMENT MASONS' UNION LOCAL 502 APPRENTICE EDUCATIONAL AND TRAINING TRUST and the CEMENT MASONS' LOCAL NO. 502 RETIREE WELFARE FUND (collectively "TRUST FUNDS") are administered at 739 25<sup>th</sup> Ave., Bellwood, Illinois 60104 and pursuant to 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the Northern District of Illinois, Eastern Division.

### **PARTIES**

3. The TRUST FUNDS receive contributions from numerous employers pursuant to the Collective Bargaining Agreement ("CBA") entered into between the CEMENT MASONS' UNION LOCAL NO. 502 PLASTERERS AREA 5 ("UNION") and the Midwest Wall and Ceiling Contractors, and therefore are multiemployer plans under 29 U.S.C. §§ 1002(37).
4. Pursuant to Sections 502(a)(3) and 515 of ERISA (29 U.S.C. §§ 1132 and 1145), the TRUST FUNDS are authorized to bring this action on behalf of their participants and beneficiaries for the purpose of collecting unpaid contributions.
5. The UNION is the bargaining representative of the Defendant ASC INSULATION, FIREPROOFING AND SUPPLIES, INC. ("ASC INSULATION")'s bargaining-unit employees.
6. The Defendant ASC INSULATION is an Illinois corporation with its principal place of business in West Chicago, Illinois.

**COUNT I**  
**BREACH OF CONTRACT**

7. Plaintiffs re-allege and incorporate the allegations contained in Paragraphs 1-6 of this Complaint with the same force and effect as if fully set forth herein.
8. ASC INSULATION is an employer engaged in an industry affecting commerce, which agreed to be bound by the terms of the CBA through a Memorandum of Understanding. (A copy of the Memorandum of Understanding is attached as **Exhibit 1**); (A copy of the CBA is attached as **Exhibit 2**).
9. Through the CBA and Memorandum of Understanding, ASC INSULATION agreed to be bound by the provisions of the Agreements and Declarations of Trust which created the TRUST FUNDS (hereinafter referred to as the “Trust Agreements”).
10. Pursuant to the provisions of the CBA, Memorandum of Understanding, and Trust Agreements, Defendant ASC INSULATION is required to make monthly reports of the number of hours worked by its bargaining-unit employees and pay contributions to the TRUST FUNDS for each hour that a bargaining-unit employee performs any work at the negotiated rate set forth in the CBA. The monthly reports and contributions during all relevant times were due on or before the 15<sup>th</sup> day of the calendar month following the calendar month during which the work was performed. (**Exhibit 2**).
11. Pursuant to Section 502(g)(2) of ERISA (29 U.S.C. § 1132(g)(2)) and the provisions of the CBA and Trust Agreements, employers who fail to submit their monthly reports and contributions to the TRUST FUNDS on a timely basis are responsible for the payment of liquidated damages equal to fifteen percent (15%) of the amount unpaid, plus interest at either a rate of ten percent (10%) per annum or the highest legally acceptable interest rate, any reasonable attorneys’ fees and costs of maintaining suit, as well as any audit fees incurred. (**Exhibit 2**).

12. Pursuant to the CBA and properly executed check-off cards, ASC INSULATION is required to deduct \$3.40 for each hour paid to its bargaining-unit employees and remit it to the UNION. **(Exhibit 2).**
13. ASC INSULATION failed to submit timely payment of contributions and union dues for the months of June 2018, July 2018, August 2018, and September 2018.
14. As a result of ASC INSULATION's failure to remit timely payment for contributions and union dues for the months of June 2018, July 2018, August 2018, and September 2018, ASC INSULATION owes the TRUST FUNDS and UNION \$17,853.61 in liquidated damages.
15. ASC INSULATION failed to submit their monthly reports for the months of October 2018, November 2018, December 2018, and January 2019, and owes the TRUST FUNDS and UNION contributions and wage deductions in an unknown amount.
16. As a result of ASC INSULATION's failure to timely remit payment of contributions and wage deduction for the months of October 2018, November 2018, December 2018, and January 2019, ASC INSULATION owes the TRUST FUNDS and UNION liquidated damages and interest in an unknown amount.
17. Defendant ASC INSULATION has a continuing obligation to remit monthly contribution reports, contributions, and wage deductions on a monthly basis to Plaintiffs and to comply with the terms of the CBA, Memorandum of Understanding, and Trust Agreements.
18. Plaintiffs have been required to employ the undersigned counsel to collect the monies that are due and owing from ASC INSULATION.
19. Plaintiffs have complied with all conditions precedent in bringing this suit.
20. Defendant ASC INSULATION is obligated to pay the reasonable attorneys' fees and court costs incurred by the Plaintiffs pursuant to the CBA, Memorandum of Understanding, Trust Agreements, and 29 U.S.C. § 1132(g)(2)(D).

WHEREFORE, Plaintiffs respectfully request:

- A. That Judgment be entered in favor of Plaintiffs and against Defendant ASC INSULATION in the amount of \$17,853.61 for liquidated damages resulting from its late payment of contributions and wage deductions for the months of June 2018, July 2018, August 2018, and September 2018;
- B. That Defendant ASC INSULATION be ordered to remit its monthly contribution reports for the months of October 2018, November 2018, December 2018, and January 2019;
- C. That Judgment be entered in favor of Plaintiffs and against Defendant ASC INSULATION for any and all other contributions, wage deductions, liquidated damages, and interest found to be due and owing for the months of October 2018, November 2018, December 2018, and January 2019;
- D. That Judgment be entered in favor of Plaintiffs and against Defendant ASC INSULATION for any and all other contributions, wage deductions, liquidated damages, and interest found to be due and owing in addition to those referenced in Paragraphs A through C above;
- E. That Defendant ASC INSULATION be ordered to pay the reasonable attorneys' fees and costs incurred by the Plaintiffs pursuant to the CBA, Memorandum of Understanding, Trust Agreements, and 29 U.S.C. § 1132(g)(2)(D); and
- F. That Plaintiffs have such other and further relief as the Court may deem just and equitable all at Defendant ASC INSULATION's cost pursuant to 29 U.S.C. § 1132(g)(2)(E).

Respectfully Submitted,

**PENSION FUND OF CEMENT MASONS'  
UNION LOCAL UNION NO. 502 *et al.***

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